

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DEBORAH TAVENNER

Plaintiff,

21 CIVIL 6345 (KMK)

-against-

JUDGMENT

INTERNATIONAL BUSINESS
MACHINES CORP.,

Defendants.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated September 23, 2022, Defendant's Motion is granted. Accordingly, Plaintiff's Motion for Summary Judgment is denied as moot. See, e.g., *Northwell Health, Inc. v. Lexington Ins.*, No. 21-CV-1104, 2021 WL 3163273, at *1 (S.D.N.Y. July 7, 2021) ("[T]he Court grants the [defendant's] motion to dismiss and denies the [plaintiff's] motion for partial summary judgment as moot."); *Markham v. Rosenbaum*, No. 20-CV-6039, 2020 WL 3316099, at *11 (W.D.N.Y. June 18, 2020) ("Because the Court dismisses the claims... [the] [p]laintiff's motion for summary judgment... is DENIED AS MOOT.") (capitalization in original), appeal dismissed, No. 20-2223, 2021 WL 3027159 (2d Cir. May 13, 2021). Plaintiff has not requested leave to amend her complaint nor has she suggested that there exist any additional facts that could remedy the above-mentioned substantive problems; accordingly, Plaintiff's claims are also dismissed with prejudice. See *Gallop v. Cheney*, 642 F.3d 364, 369 (2d Cir. 2011) (holding that dismissal with prejudice is proper where there is no indication the plaintiff could provide additional allegations leading to a different result); *Cuoco v. Moritsugu*,

222 F.3d 99, 112 (2d Cir. 2000) (holding that where the infirmities of a plaintiff's complaint are "substantive," "better pleading will not cure it" such that "[r]epleading would thus be futile"); see also *In re: IBM*, 2022 WL 2752618, at *12 (declining to exercise jurisdiction over all post-arbitration claims, granting the defendant's motion to dismiss, denying as moot the plaintiffs' summary judgment motion, and denying the plaintiffs' motion for leave to amend); accordingly, the case is closed.

Dated: New York, New York
September 23, 2022

RUBY J. KRAJICK

Clerk of Court

BY:



Deputy Clerk